

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

WEST COVINA UNIFIED SCHOOL
DISTRICT, ET AL.

OAH CASE NO. 2013070381

ORDER GRANTING CALIFORNIA
DEPARTMENT OF EDUCATION'S
MOTION TO DISMISS

On July 9, 2013, Student's parents on behalf of Student (Student) filed a request for due process hearing (complaint), naming the West Covina Unified School District (District), the California Department of Education (CDE), and others as the respondents.

On July 16, 2013, CDE filed a motion to dismiss, contending that CDE has not been involved in any educational decisions for Student and is not a proper party to this action. On July 18, 2013, Student filed an opposition. On July 18, 2013, CDE filed a reply.

APPLICABLE LAW

Parents have the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).) The Office of Administrative Hearings (OAH) has jurisdiction to hear due process claims arising under the Individuals with Disabilities Education Act (IDEA). (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) A "public agency" is defined as "a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs." (Ed. Code, §§ 56500 and 56028.5.)

DISCUSSION

Student does not allege that CDE provided any educational services to Student, made any education decisions related specifically to Student, or was involved with Student's education as a local education agency (LEA). Instead, Student relies upon CDE's general oversight authority under California special education law. Student alleges that CDE is:

“the state education agency (SEA) ultimately responsible to assure the provision of a free and appropriate public education (FAPE). As such, it is a proper and necessary party and, therefore, must be noticed of its liability in this action.”

In the remainder of the complaint, Student several times requests a finding that “CDE failed in its oversight responsibilities under the IDEA.” Apparently Student believes that the general oversight responsibilities of CDE are a sufficient basis for a special education due process complaint against CDE. Student is incorrect.

The IDEA requires states to develop programs for ensuring that the mandates of IDEA are met and that children eligible for special education receive a FAPE. (20 USC section 1412 (a).) California law places the primary responsibility for providing special education to eligible children on the LEA, usually the school district in which the parents of the child reside. (See, e.g., Ed. Code, §§ 56300, 56340 [describing LEA responsibilities].) The law also contemplates that, when a parent disputes the educational services provided to the special needs child, the proper respondent to the due process hearing request is the LEA. (See, e.g., Ed. Code, 56502, subd. (d)(2)(B) [LEA's response to due process complaint].) Only in unusual circumstances does California law deviate from that statutory scheme to require a different entity to provide those services.

Although CDE has general oversight responsibility for special education in California, it is not usually a proper respondent in a due process case under IDEA, because it is not a provider of special education services to children. (See Ed. Code, § 56501, subd. (a).) An exception to this general rule involves the children in the state schools for the deaf or blind. (Ed. Code, §§ 59002; 59102.)

In unusual circumstances, such as a situation in which California law fails to designate an LEA with responsibility to address a child's education, CDE may sometimes be a proper party. (See *Orange County Department of Education v. California Department of Education* (9th Cir. 2011) 668 F.3d 1052.) In the instant case, Student has not alleged any facts or law to show such unusual situations. According to Student's complaint, there is an LEA responsible for Student's education, Student's complaint raises allegations against that LEA, and Student makes no showing that Student will not be able to obtain relief from the LEA if Student prevails. There is no basis for keeping CDE as a party to this due process case. CDE must be dismissed from the case.

ORDER

1. CDE's motion to be dismissed from this case is granted.
2. CDE is hereby dismissed as a party.

3. The matter will proceed as scheduled against the remaining parties. All hearing and other dates will remain on calendar as previously scheduled.

IT IS SO ORDERED.

Dated: July 25, 2013

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings